UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR - 9 2011

Abigail Dillen, Esq.
Earthjustice
156 William Street, Suite 800
New York, NY 10038

Re: Coal Ash Management in Puerto Rico

Dear Ms. Dillen:

In our meeting on September 10,2010, you requested, along with Ms. Deborah Goldberg, Esq., of Earthjustice, and Ms. Ruth Santiago, Esq., that the U.S. Environmental Protection Agency (EPA) look into the management of ash generated in Puerto Rico by the AES Guayarna coal-fired power plant.

Ms. Santiago said it was her understanding that a beneficial use determination for a material known as "Agremax," produced from the ash by AES Puerto Rico, had been repealed by the Puerto Rico Environmental Quality Board; that the ash had been used in the past as daily cover at the Salinas Municipal Solid Waste Landfill, in Salinas, Puerto Rico; that Agremax had been used for other purposes in the municipalities of Arroyo, Guayarna, and Salinas, Puerto Rico; and that the Landfill could not adequately handle stormwater runoff and had an unpermitted point source discharge to a mangrove forest in the nearby Jobos Bay. Ms. Santiago also said EPA would be provided with "preliminary" data on Agremax, and urged that EPA utilize its authority under Section 7003 of the Resource Conservation and Recovery Act (RCRA) to conduct groundwater and other monitoring.

As you know, in May 2010, EPA published a proposed rule to ensure the safe disposal and management of coal ash. Under the proposed rule, the Agency would leave in place the exemption for beneficial uses of coal ash, in which coal combustion residuals are recycled as components of products instead of being placed in impoundments or landfills, EPA has not yet issued a final rule, and, until a decision is made, EPA's prior determination that coal ash is a solid waste remains in force. However, it is noted that no RCRA regulatory requirements for coal ash management currently exist, while states may, and have, made binding regulatory determinations on appropriate coal ash management practices.

In order to address your and Ms. Santiago's concerns, EPA has conducted a number of actions. On September 17, 2010, EPA inspected the Salinas Landfill to verify compliance with the National Pollutant Discharge Elimination System (NPDES) Multi Sector General Permit (MSGP) for storm water discharges associated with industrial activities. The inspection confirmed that the facility has coverage under the MSGP, has

developed the required Storm Water Pollution Prevention Plan, and that a leachate collection system at the Landfill was in place. No evidence of leachate releases or spill to the storm water collection system was observed. However, a storm water outfall was found to discharge through a pipeline into a ditch that eventually reaches the Jobos Bay, and no evidence of discharge monitoring, consistent with the terms of the NPDES permit, was found. An Administrative Compliance Order was issued on October 29,2010, requiring implementation of the MSGP, including best management practices for stormwater runoff control, and EPA will take any necessary further measures to bring the Landfill into compliance with the NPDES MSGP.

In addition, we have spoken with Ms. Carmen González of the Jobos Bay Estuarine Research Reserve, to determine the potential impacts, if any, the discharges from the Salinas Landfill may be having on the Reserve. Ms. González stated that the potential impacts are due to sediments being carried into the Reserve's waters by storm water run off from the Landfill, and that she would provide photographs to us that document the impacts. We are currently awaiting receipt of these photographs. We expect that these impacts will be minimized once the Landfill achieves compliance with its MSGP, under which the Landfill must monitor iron and total suspended solids on a quarterly basis and report its findings to EPA.

On September 28,2010, EPA inspected the Landfill to determine compliance with RCRA solid waste regulations. During the inspection, it was discovered that some leachate breakout had occurred in a trench along the Landfill perimeter, and appeared to have been covered with soil. Mr. Miguel Garcia Campos, the environmental manager for Allied Waste Services, which owns the Landfill, subsequently provided documentation that the remaining leachate had been pumped and disposed. In addition, our review of analytical results of leachate and groundwater monitoring by the Landfill revealed that constituent levels are not inconsistent with what would be expected from a municipal solid waste landfill.

Following the inspection, we met with Mr. Carlos Gonzalez, the coal combustion product manager for AES Puerto Rico. He informed us that the Guayama coal-fired power plant mixes all of its bottom and fly ash with the spent limestone from its air pollution control equipment, to produce 4,000 tons/week of Agremax, an aggregate it ships off-site as a "product" for use in road bed construction, concrete manufacturing, and soil stabilization. These uses would be consistent with the existing beneficial use determinations made by the Puerto Rico Environmental Quality Board (EQB), which EPA confirmed have been, and remain, effective (EQB Resolutions R-96-39-1, R-00-14-2, and R-05-14-11, dated October 29, 1996, April 25, 2000, and May 3,2005, respectively). During the September 28,2010, inspection, Mr. Garcia had informed us that no ash is or has been disposed at the Landfill, but noted that Agremax had been used several years ago at the Landfill for road bed construction. Additionally, 19,000 tons of Agremax had been recently used to construct a two foot protective cover over the geocomposite liner in a new landfill cell being constructed. Mr. Garcia confirmed that neither Agremax nor ash has been used for daily cover at the Landfill.

The positive EQB beneficial use determination is based on Agremax not failing the RCRA toxicity characteristic leaching procedure (TCLP) for heavy metals, as detailed in a 2007 study and report by the Puerto Rico legislature. EPA has since developed new test methods for evaluating coal combustion residues for beneficial use applications, which are currently undergoing validation. EPA has no plan to replace the regulatory uses of the TCLP with the new test methods. Rather, once validated, EPA intends the new test methods to be used where TCLP is not required or best suited, and where waste management or reuse conditions are known, in order to provide an estimate of contaminant release tailored to a particular environmental scenario or defined range of conditions.

Finally, we note that we met with Ms. Santiago in December 2010, and she has provided additional documents for our review relating this matter. We will inform you as to the outcome of our review upon completion.

I trust that this information will be helpful to you. Thank you again for your interest in our environment.

Sincerely yours,

Judith A. Enck

Judith A. Enck
Regional Administrator

cc: Ruth Santiago, Esq.
P.O.Box 518
Salinas, PR 0075 1